Mailed:
March 18, 2003
Paper No. 11
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Linden Oaks Corporation

Serial No. 76/270,832

Stephen B. Salai of Harter Secrest & Emery LLP for Linden Oaks Corporation.

Samuel E. Sharper, Jr., Trademark Examining Attorney, Law Office 101 (Jerry L. Price, Managing Attorney).

Before Quinn, Hohein and Bucher, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Linden Oaks Corporation has filed an application to register the mark PICCADILLY for "snack foods, namely potato chips" in International Class 29.[1]

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used in connection with its goods, so resembles the mark PICCADILLIES which is

[1] Application Serial No. 76/270,832 was filed on June 13, 2001 and alleges a date of first use anywhere and first use in commerce of June 1971.

registered for "cookies" in International Class 30,[2] as to be likely to cause confusion, to cause mistake or to deceive.

Applicant has appealed. Briefs have been filed, but applicant did not request an oral hearing.

We affirm the refusal to register.

Our determination under Section 2(d) is based upon an analysis of all of the facts in evidence which are relevant to the factors bearing on the issue of whether there is a likelihood of confusion. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 568 (CCPA 1973). However, as indicated in *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976), in any likelihood of confusion analysis, two key considerations are the relatedness of the goods and the similarity of the marks.[3]

Turning first to consideration of the respective goods, applicant argues that the Trademark Examining Attorney "has not provided sufficient evidence to support his argument that Applicant's and Registrant's goods are closely related." (Applicant's reply brief, p. 1). The Trademark Examining Attorney, on the other hand, points to ten third-party registrations that have been made of record where the same mark is registered for both cookies and potato chips,

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[2] Reg. No. 1,946,063, issued on January 2, 1996, Section 8 affidavit accepted and Section 15 affidavit acknowledged.

[3] The court, in particular, pointed out that: "The fundamental inquiry mandated by §2(d) goes to the cumulative

as well as to screen prints of pages from Charles Chips' Internet website having listings of a selection of cookies along with its potato chips. In its reply brief, applicant points out that while Charles Chips' sells potato chips under its house mark ("Charles"), the cookies are sold under other marks (e.g., "Byers'," "Fourré," *et al*.).

It is sufficient for making a determination as to likelihood of confusion that the goods are related in some manner and/or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under situations that would give rise, because of the marks employed in connection therewith, to the mistaken belief that they originate from or are in some way associated with the same entity or provider. *See* *Monsanto Co. v. Enviro-Chem Corp*., 199 USPQ 590, 595-96 (TTAB 1978) and *In re International Telephone & Telegraph Corp*., 197 USPQ 910, 911 (TTAB 1978). In this context, we note that the third-party registrations provided for this record include nationally-known snack food producers like PepsiCo/Frito-Lay and Tom's Foods. Furthermore, a webpage from Sun Meadow shows a variety of bag meals touted for "In Flight Meals," "Field Exercise," "Troop Movement," "After Hour Meals, or "Disaster Relief." In addition to two sandwiches in each meal, most meals

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effect of differences in the essential characteristics of the goods and differences in the marks."

include a snack-sized bag of potato chips and a snack-sized bag of cookies.[4]

Accordingly, based on the evidence of record pointing to the commercial realities in the snack food industry, we conclude that the Trademark Examining Attorney has established that applicant's potato chips are so closely related to registrant's cookies, that, if marketed under the same or similar marks, confusion as to the origin or affiliation thereof would be likely to occur.[5]

Turning, therefore, to consideration of the respective marks, applicant notes that these marks are not identical. We concur with the Trademark Examining Attorney, however, that confusion is likely from contemporaneous use of the respective marks in connection with the goods at issue.

The word "piccadilly" (or "piccadillies") appears to be arbitrary as applied to these goods. The difference between the singular and plural forms of the word, if noted by prospective customers, will certainly not long be remembered. Although an earlier-assigned Trademark Examining Attorney had cited registrations of PICCADILLY registered for pickle and sauerkraut and PICCADELI registered for biscuits, these third-party registrations do

[4] http://www.sunmeadow.net/military_rb.html

[5] As to two related *du Pont* factors, we are also convinced from this record that cookies and potato chips move in the same channels of trade to the same class of ordinary purchasers.

not lead us to the conclusion that PICCADILLIES is weak or "diluted" as applied to food items, as argued by applicant.[6]

Hence, we find that when considered in their entireties, applicant's PICCADILLY mark and registrant's PICCADILLIES mark are substantially the same in sound, appearance and connotation. Accordingly, based on the nearly identical overall commercial impression shared by these two marks, we conclude that purchasers and potential customers, who are familiar or acquainted with registrant's PICCADILLIES mark for its cookies would be likely to believe, upon encountering applicant's quite similar PICCADILLY mark for its potato chips, that such closely related goods emanate from, or are sponsored by or associated with, the same source.

Decision: The refusal under Section 2(d) of the Trademark Act is hereby affirmed.

[6] Moreover, as to applicant's argument that the earlier coexistence on the federal trademark register of its now-cancelled registration with the cited registration indicates that the owner of the cited registration would have no problem should the instant application mature into a registration, we simply note that applicant has not submitted herein a consent agreement from registrant. *Cf*. *In re Four Seasons Hotels Ltd*., 987 F.2d 1565, 26 USPQ2d 1071 (Fed. Cir. 1993).